

Supreme Court, U.S.
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No. 89-888

In the
Supreme Court of the United States
December Term, 1989

State of New Hampshire
Petitioner

v.

Robert D. Dedrick
Respondent

On Petition for a Writ of Certiorari
to the Supreme Court of New Hampshire

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

1. Did both the Superior Court judge and the New Hampshire Supreme Court err in finding that the respondent was in custody for Miranda purposes where the respondent was interrogated simultaneously by two detectives in a windowless room and after persistent denials of guilt over a forty minute period asserted his right to confer with a lawyer?

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The respondent, Robert D. Dedrick, respectfully requests that this Court deny the petition for writ of certiorari seeking review of the New Hampshire Supreme Court's opinion in this case. That opinion is reported at 132 N.H. ____, 564 A.2d 423 (1989).

STATEMENT OF THE CASE

As part of the investigation into the stabbing death of Luis Rameriz, Manchester Police Sergeant James Stewart received information that the respondent, Robert D. Dedrick, had been at Rameriz' apartment about eight hours before the discovery of the body. (T. 9)*. Dedrick learned the police were looking for him and telephoned the police station. (T. 11). Dedrick agreed to go to the station if the police would pick him up. They did so. (T. 12).

At the station, Sergeant Stewart brought Dedrick into a windowless interview room in the detective division at 9:40 a.m. (T. 17, 19). After Sergeant Stewart took a brief personal history, Dedrick asked to use the bathroom. (T. 21). Stewart said Dedrick could. Dedrick went unescorted to the bathroom and returned to the interview room. (T. 24).

There, Sergeant Stewart and Lieutenant Bovaird told Dedrick they wanted to talk about Dedrick's "activity on May 30th". (T. 24). Bovaird told Dedrick he was not under arrest. (T. 25). Dedrick gave an account of his activities that day that included two visits to Luis Rameriz apartment but no mention of whether or how Rameriz had been stabbed. (T. 26-27).

*"T." refers to the volume of the Motion to Suppress transcript dated September 15, 1987.

At this point, the two detectives went outside the interview room leaving Dedrick inside behind the closed door. (T. 28). The detectives discussed Dedrick's explanation, concluded it was inconsistent with other evidence, that Dedrick was a prime suspect and not telling the truth. (T. 29, 149).

Upon re-entering the interview room at 10:00 a.m. Bovaird told Dedrick he was not under arrest. (T. 127). At no point did he tell Dedrick he was free to leave (T. 142, 147). Bovaird advised Dedrick of his rights. (T. 125). Dedrick stated he understood his rights and waived them. (T. 125-126).

Over the next forty minutes, the two detectives interrogated Dedrick. They started by telling Dedrick that Rameriz was dead (T. 32) and that they "didn't believe him". (T. 152). They questioned Dedrick about whether he had been wearing sneakers that day. Dedrick "at first" denied he owned sneakers then "eventually" said he owned some but was not wearing them that day. (T. 33). Dedrick then "initially" denied that he owed Rameriz money for cocaine but later admitted he did but it was "patched up". (T. 34). The detectives "turned up the heat a little" by telling Dedrick that his fingerprints and sneaker prints would probably be found in Rameriz's apartment. (T. 154). The detectives suggested to Dedrick that he had killed Rameriz in self-defense and that he was lying. (T. 153-154). Dedrick denied that that he had killed Rameriz. However, his denials which at first were negative responses became explanations. (T. 34-35). Then "[a]fter a lengthy discussion"

about cocaine dealing and further suggestion that Rameriz was killed in a fight over a cocaine debt, Dedrick stated "that he would like to speak to a lawyer." (T. 36).

At this point Sergeant Stewart stood up, picked up his notes and said, "You want a lawyer, that's fine with us but we'll never know whether Luis came at you with a knife." (T. 41).

Dedrick responded, "That's how it happened". (T. 37). Dedrick then stated that Rameriz had come after him with a knife and that he had defended himself by striking Rameriz with his fist disarming Rameriz. (T. 41). Dedrick showed the detective a cut on his arm. (T. 41). The time was 10:40 a.m.

In response to further interrogation, Dedrick gave a detailed account of what happened and told the detectives where he had thrown the knife. (T. 45). Dedrick then again stated he wanted to talk with a lawyer. (T. 46). At this point, the interrogation ended. Dedrick was arrested for murder and placed in a holding cell. (T. 48).

REASONS FOR DENYING THE WRIT

1. The factual determination by the two lower courts that respondent was in custody was not contrary to the manifest weight of the evidence.

Petitioner argues that the two lower courts erred in finding that respondent was in custody because there were no "objective manifestations of restraint on Dedrick's freedom of movement . . . and . . . the police did nothing to indicate to him that he was free to leave". Pet. for Cert. 7-8.

Petitioner fails to acknowledge that appellate review of custody is extremely limited. Custody is a factual determination. To reverse this determination by the two lower courts, petitioner must show that the finding was contrary to the manifest weight of evidence. United States v. Beraun-Panez, 812 F.2d 578, 580 (9th Cir.), modified, 830 F.2d 127 (1987). Moreover, under this Court's "two-court rule" a factual determination made by the two lower courts should not be reviewed "in the absence of a very obvious and exceptional showing of error". Graver Mfg. Co. v. Linde Co., 336 U.S. 271, 275 (1949); United States v. Ceccolini, 435 U.S. 268, 273 (1978).

No such error was made in the case at bar. Indeed, the record and findings in this case are inconsistent with petitioner's claim that the police "did nothing" to objectively communicate to Dedrick that he was in custody. The New Hampshire Supreme Court reviewed the lower court's findings

concerning "the nature of the room in which Dedrick was questioned, the number and positioning of the officers, and the length and character of the interview". App. Pet. for Cert 8a. The court placed particular emphasis on this latter factor noting that when the two detectives re-entered the interrogation room "the intensity of the interview escalated". Id. The court carefully reviewed what happened during the "forty minutes of heated questioning" and concluded that "such a change would have signaled a reasonable man in the same circumstances that the freedom officers had accorded him earlier was no longer available and that, as often as he made denials, they would renew their accusations until, in the end, he either confessed or asked, as Dedrick in fact did, to speak with an attorney." Id. In short, far from there being no "objective manifestations" of custody, the facts "amply support . . . the . . . custody determination". Id.

2. The New Hampshire Supreme Court correctly applied an objective standard for custody as mandated by this Court's decisions.

The petitioner argues that the decision of the New Hampshire Supreme Court conflicts with California v. Beheler, 463 U.S. 1121 (1983), Oregon v. Mathiason, 429 U.S. 492 (1977) and misinterprets the definition of custody in Berkemer v. McCarty, 468 U.S. 420 (1984). The petitioner concludes that the

New Hampshire Supreme Court "has created a confusing, almost subjective, test for determining 'in custody' for Miranda purposes". Pet. for Cert. 10.

In fact, the New Hampshire Supreme Court went to great lengths to spell out that the test for custody is objective, not subjective, and that certain objective factors are to be examined. See App. to Pet. for Cert. 6a-7a. The court "Contrary to the State's argument, the superior court properly based its custody determination on objective rather than subjective criteria." App. Pet. for Cert. 7a. The court thus did not apply a "confusing, almost subjective test" but applied the correct standard.

Nor was the court's decision inconsistent with either Beheler or Mathiason. In Beheler the lower court erred by finding custody simply because the questioning took place at the police station and the police had already identified Beheler as a suspect. Id. at 1123, 1125. In Mathiason the lower court erred by finding custody because "the interrogation took place in a 'coercive environment'". Id. at 492.

The New Hampshire Supreme Court did not commit similar error. The court specifically noted "that the superior court did not conclude that Dedrick was in custody merely because he was a suspect or because he found himself in a coercive environment." App. to Pet. for Cert. 7a. The court correctly cited and applied the objective standard of Beheler ("formal arrest or restraint on freedom of movement of the degree

associated with formal arrest". Id. at 1125). See App. to Pet. for Cert. 6a. And, the court applied this standard, as instructed by Berkemer v. McCarty, "by considering 'how a reasonable man in the suspect's position would have understood his situation". Id. at 442. See App. to Pet. for Cert. 6a-7a.

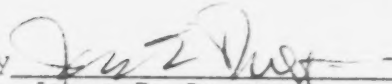
In sum, the court recognized the standard set forth in this Court's opinions and correctly applied that standard to the facts.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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